IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANNIE LEE CARROLL, INDIVIDUALLY AND AS TRUSTEE OF THE ANNIE LEE CARROLL DECLARATION OF TRUST U.A.D. 11/6/05,
Appellants,
vs.
R.J. NELSON, INC., A NEVADA CORPORATION; AND RUBY NELSON CARROLL, INDIVIDUALLY, N/K/A RUBY NELSON,
Respondents.

No. 81883-COA

ORDER OF AFFIRMANCE

Annie Lee Carroll appeals a district court final judgment denying her quiet title and tort claims. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Lawrence William Carroll, III (Larry), married Ruby Jean Nelson in 2010.[1] The next year, the couple formed a Nevada corporation, R.J. Nelson, Inc. (RJN), as a vehicle to publish Ruby's book—something that never occurred. Ruby and Larry were the sole officers of RJN. In 2013, Larry's mother, Annie Lee Carroll, provided Larry and Ruby money from her trust so they could purchase a home. Larry, Ruby, Annie, and Ruby's adult son planned to live together in the home. All parties agree Annie's trust provided the entire purchase price for the home. To avoid creditors, Larry and Ruby titled the home in the name of RJN and never specified that

[1]We recount the facts only as necessary for the disposition.

Annie had an ownership interest, security interest, or lien in the home or corporation.

Sometime thereafter, Ruby learned that Larry had commenced an extramarital affair, so she unilaterally removed Larry as an officer of RJN. She also learned that Annie had stopped paying property taxes on the home, so she borrowed $6,000 from her sister to pay the property taxes. In exchange, Ruby created a trust in her sister's name and then unilaterally gave the trust a quitclaim deed to the home. She filed for divorce in 2016. During the divorce proceedings, Ruby claimed that Annie had gifted her the home as her sole and separate property. Two weeks later, Annie filed a civil suit in district court, seeking, among other things, to quiet title to the home and preserve her interest therein.

After initial litigation in both the family court and district court cases, the family court case proceeded, and the district court delayed the proceedings in this action until a resolution could be reached in the family court case. During the divorce proceedings before the family court, Larry argued that Annie loaned the parties money. In support, he presented his testimony, Annie's testimony that she intended to be repaid, and an unsigned document regarding the alleged arrangement. Ruby argued that Annie gifted her the home as her sole and separate property. The family court held, in an amended decree, in relevant part, that: (1) Annie may have an interest in the home, but the court was not adjudicating that interest because she was not a party to the litigation; (2) Annie never gifted Ruby the home as her sole and separate property, nor did she gift the money to the corporation, nor was there any writing evidencing that this property was a gift to Ruby and Larry, and therefore declined to decide Annie's interest in the property; (3) the corporation—and by extension the

corporation's sole asset (the residence)—and the car were the community's only assets, but the court could not determine the extent of the parties' interest in the residence because of Annie's potential interest in the home; and (4) Ruby unlawfully transferred the home from RJN to her sister's trust, in violation of NRS 123.230, which protects community property from unilateral transfers. Ruby appealed the divorce decree primarily on grounds unrelated to the issues above, and this court affirmed the judgment in 2019.

Following the divorce decree, and in advance of trial in the related civil case, Annie filed a motion in limine in the civil court seeking to offensively preclude Ruby from relitigating the issues determined in the family case as stated above. Annie claimed that the divorce decree provided for, and the court of appeals affirmed, that Annie loaned Ruby and Larry the money for the home, so the district court was bound by that determination. Apparently the district court denied or deferred the pre-trial motion for reasons not in the record, and after trial, the district court found that Annie gifted Larry the money alone, but that he subsequently transmuted it when he used the funds to purchase the home, which he titled in RJN's name and which the family court determined was a community asset. Annie then filed a motion to alter and amend the judgment on grounds that Larry was not a party to the civil action and that res judicata barred the district court from ruling as it did. The district court struck its previous order in part and found solely that Annie had not loaned the money to anyone. It then ruled against Annie on her remaining claims, including fraudulent conveyance, unjust enrichment, and elder abuse.

Annie now appeals the district court's judgment, arguing that the district court abused its discretion when it allowed Ruby to relitigate

the issues decided in family court and ruled contrary to what the family court held. Annie also claims that the district court abused its discretion in ruling against her fraudulent conveyance, unjust enrichment, and elder abuse claims. We address each of her arguments in turn.

Neither issue or claim preclusion bar the district court's holdings

Annie argues that res judicata barred the district court from holding that (1) Annie did not loan Larry and Ruby money to purchase the residence, and (2) Ruby did not *fraudulently* convey the residence. Therefore, she asserts that the district court was required to find that Annie loaned Ruby and Larry the money and rule that Ruby must thus reimburse Annie for the money Ruby received upon sale of the residence, which the district court treated as a community asset without deciding if—or to what extent—Annie had an interest in the residence.

During Ruby and Larry's divorce, the family court ruled that the home was community property. However, it also held that it could not quantify the extent of Ruby and Larry's interest in the home because Annie, who was not a party to the divorce, may have an interest in the home and it could not adjudicate Annie's interest in her absence. However, the family court also held that Annie did not gift Ruby or RJN the money to purchase the home, nor was there any document showing that Annie gifted the money to the community; thus, Annie's interest in the property remained undecided. Following the conclusion of the divorce, Annie filed a motion in limine to bar Ruby from relitigating certain issues in district court because Annie argued the family court necessarily determined that Annie loaned the parties the money. The district court, however, found that Annie did not loan the parties the money. Annie now argues on appeal that the district court abused its discretion in allowing Ruby to relitigate that issue and in holding that Annie had not loaned the parties the money—contrary

to the family court's holding. Annie asserts that the money was a loan from her to Larry and Ruby, and the result of the trial would have been different but for this error.

Res judicata precludes parties from "relitigating a cause of action or an issue which has been finally determined by a court of competent jurisdiction . . . to prevent multiple litigation . . . and wasted judicial resources." *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994), *holding modified by Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 963 P.2d 465 (1998). In Nevada, courts "use the terms of claim preclusion and issue preclusion, over the use of 'res judicata.'"[2] *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 786 n.2, 312 P.3d 479, 483 n.2 (2013). On appeal, this court reviews allegations that issue or claim preclusion bars relitigation of an issue through a two-step process. *See State, Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 984, 103 P.3d 8, 16 (2004). "This court performs a de novo review of whether issue preclusion is available. Once it is determined that issue preclusion is available, the actual decision to apply it is left to the discretion of the district court." *Id.*

Issue preclusion applies when "(1) the issue decided in the prior litigation [is] identical to the issue presented in the current action; (2) the initial ruling [was] on the merits and ha[s] become final; (3) the party against whom the judgment [was] asserted [was] a party or in privity with

---

[2]Indeed, "'res judicata' refers only to claim preclusion," *Exec. Mgmt.*, 114 Nev. at 834, 963 P.2d at 473, while "'issue preclusion' and 'collateral estoppel' are interchangeable terms." *LaForge v. State, Univ. & Cmty. Coll. Sys. of Nev.*, 116 Nev. 415, 419 n.2, 997 P.2d 130, 133 n.2 (2000); *see also Clark v. Clark*, 80 Nev. 52, 56, 389 P.2d 69, 71 (1964) ("One writer, for convenience, refers to res judicata as involving 'claim preclusion,' and collateral estoppel as dealing with 'issue preclusion.'").

a party to the prior litigation;[3] and (4) the issue was actually and necessarily litigated." *Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), *holding modified by Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015) (internal citations and quotations omitted).[4] The party seeking to apply issue preclusion bears the burden of proving that it should apply. *See Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 481, 215 P.3d 709, 718 (2009), *holding modified by Garcia v. Prudential Ins. Co. of Am.*, 129 Nev. 15, 293 P.3d 869 (2013). We analyze each element separately.

---

[3]Neither party seriously disputes this prong. For issue preclusion, unlike claim preclusion, only the person against whom issue preclusion is asserted need be a party to the previous litigation. *Paradise Palms Cmty. Ass'n v. Paradise Homes*, 89 Nev. 27, 31-32, 505 P.2d 596, 599 (1973). Annie is the one arguing that issue preclusion applied to Ruby's arguments, and Ruby was a named party in the divorce proceeding.

[4]Claim preclusion applies if "'[(1)] the final judgment is valid, . . . [(2)] the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case, and' (3) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, *or* the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a 'good reason' for not having done so." *Weddell v. Sharp*, 131 Nev. 233, 241, 350 P.3d 80, 85 (2015) (quoting *Five Star*, 124 Nev. at 1054, 194 P.3d at 713). In her briefing, Annie uses res judicata, issue preclusion, and collateral estoppel almost interchangeably. It appears, however, that she is trying to argue that issue preclusion, not claim preclusion (res judicata), applies. But to the extent she is arguing that either claim preclusion alone, or in addition to issue preclusion, applies, she has not done so cogently and we decline to consider it. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

The issues presented in the family and district courts were not identical

For issue preclusion to apply, the issue determined in the first case must be identical to the issue in the second case. *Five Star*, 124 Nev. at 1055, 194 P.3d at 713. Issue preclusion "may apply even though the causes of action are substantially different, if the same fact issue is presented." *Clark v. Clark*, 80 Nev. 52, 56, 389 P.2d 69, 71 (1964). Accordingly, "issue preclusion cannot be avoided by attempting to raise a new legal or factual argument that involves the same ultimate issue previously decided in the prior case." *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 259, 321 P.3d 912, 916-17 (2014) (holding preclusion applied where appellant tried proving a corporation's negligence through an alternate theory of duty than what he claimed in the first proceeding). "Therefore, when determining whether issue preclusion applies to a given case, courts must scrupulously review the record to determine if it actually stands as a bar to relitigation." *Kahn v. Morse & Mowbray*, 121 Nev. 464, 475, 117 P.3d 227, 235 (2005).

Here, the issues in this case are not the same. Although Annie and Larry made the same argument (Annie loaned the money) and presented the exact same evidence (their testimonies and an unsigned document) in family court and district court, the "ultimate issue to be decided" was not the same. *See Alcantara*, 130 Nev. at 259, 321 P.3d at 916-17. Indeed, the family court expressly stated that it was not determining Annie's interest in the home because she was not a party to the litigation. And it was that exact issue—Annie's ownership interest in the home—that Annie sought to preserve in district court.

Moreover, while the same factual dispute (whether Annie had gifted or loaned the money) may have been presented to both courts, *see*

Clark, 80 Nev. at 56, 389 P.2d at 71, the family court never decided that exact issue or more specifically Annie's interest, if any, in the property. Rather than affirmatively declaring that Annie gifted or loaned the funds, the family court only ever decided what it was *not*: a gift to Ruby as her sole and separate property.[5] Nevertheless, the court also declared that RJN, which held title to the residence, was community property.

Although not always stated formally in the elements for preclusion, a previous court's order can only have preclusive effect when it actually decides the contested issue. *See Marine Midland Bank v. Monroe*, 104 Nev. 307, 308, 756 P.2d 1193, 1194 (1988) ("The doctrine of collateral estoppel operates to preclude the parties or their privies from relitigating issues previously litigated and *actually determined* in the prior proceeding." (emphasis added)); *see also* Restatement (Second) of Judgments § 27 cmt. d (Am. Law. Inst. 1982) ("When an issue is properly raised, by the pleadings or otherwise, and is submitted for determination, *and is determined*, the issue is actually litigated." (emphasis added)); *id.* at cmt. e ("A judgment is not conclusive in a subsequent action as to issues which might have been but were not litigated *and determined* in the prior action." (emphasis added)). Therefore, the issue presented in family court (gift solely to Ruby) and district court (loan or gift or some combination thereof to the community or to Larry and Ruby) were not identical.

The family court's ruling was not final for issue preclusion purposes

In addition to the issues being identical, the ruling in the previous case must have been final and on the merits for issue preclusion to

---

[5]The family court also implied it was not a gift to the corporation and stated in its conclusions of law that there was no writing evidencing that Annie gifted the money to Ruby and Larry jointly.

apply. *Five Star*, 124 Nev. at 1055, 194 P.3d at 713. To be final, the judgment must be "sufficiently firm." *Kirsch v. Traber*, 134 Nev. 163, 167, 414 P.3d 818, 821 (2018) (citing Restatement (Second) of Judgments § 13). Consequently, "finality will be lacking if an issue of law or fact essential to the adjudication of the claim has been reserved for future determination." *Id.* (quoting Restatement (Second) of Judgments § 13 cmt. b); *see also Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 895, 266 P.3d 602, 607 (2011) ("[T]he general rule of claim preclusion does not apply if the court in the first action expressly reserves the right to maintain a second action or defense; the same rule should hold for issue preclusion." (internal quotations and citations omitted)). Courts must strictly construe the finality requirement. Restatement (Second) of Judgments § 13 cmt. g. "The test of finality, however, is whether the conclusion in question is procedurally definite and not whether the court might have had doubts in reaching the decision." *Id.*; *see also Kirsch*, 134 Nev. at 167, 414 P.3d at 821.

Here, the divorce decree did not finally resolve Annie's ownership interest in the residence for issue preclusion purposes. In the decree, the family court specifically found and concluded that Annie *may* have an interest in the home but that it was not determining that interest because she was not a party to the divorce proceedings and the court deferred that decision to be determined in the civil court proceedings. The family court also mentioned that the home was a community asset, but that it could not quantify the extent of Ruby and Larry's interest because of Annie's potential and undetermined interest in the home. In essence then, although the amended divorce decree was final for purposes of appeal, it would not have been "final" regarding Annie's ownership interest at the time it was issued, because the court expressly left that question for another

court to decide, and everyone knew the civil case was pending. Thus, the "conclusion in question" was not "procedurally definite" because, although the decree was final, the parties still had no idea whether (1) Annie had any interest in the property or (2) if Ruby and Larry's interest in the property was a debt or an asset, or some combination thereof.

In other words, the family court "reserved for future determination" the question of Annie's ownership interest in the residence—albeit to another court rather than to itself. And that interest would have been "essential to the adjudication of [the family court] claim" because the family court had to characterize and then distribute community property—something the family court said it could not do because of Annie's potential interest in the residence Therefore, the family court never made a final decision regarding the issue.

The issue in the first case was actually and necessarily litigated

Finally, the issue in the first case must have been actually and necessarily litigated for issue preclusion to apply. *Five Star*, 124 Nev. at 1055, 194 P.3d at 713. "When an issue is properly raised . . . and is submitted for determination, . . . the issue is actually litigated." *Alcantara*, 130 Nev. at 262, 321 P.3d at 918 (internal quotations omitted) (quoting *Frei ex rel. Litem v. Goodsell*, 129 Nev. 403, 407, 305 P.3d 70, 72 (2013)). An issue is necessarily litigated when "the issue was actually recognized by the parties as important and by the trier as necessary to the first judgment." Restatement (Second) of Judgments § 27 cmt. j; *see also Frei*, 129 Nev. at 407, 305 P.3d at 72 ("Nevada law provides that only where 'the common issue was . . . *necessary to the judgment in the earlier suit,*' will its relitigation be precluded." (quoting *Tarkanian*, 110 Nev. at 599, 879 P.2d at 1191)).

First, the issue of Annie's ownership interest in the home was actually litigated in the family court proceedings because Larry properly raised it as a defense in the divorce action, both pre-trial and during trial. Ruby, Larry, and Annie all presented evidence to the family court regarding whether Annie gifted or loaned to Ruby, or the community, the money to purchase the home. The parties thus directly presented the family court with the issue of whether Annie gifted the money to purchase the home to Ruby or loaned the money to Ruby and Larry or the corporation.

Second, this issue was also necessary to the family court determination because the family court had to characterize and distribute the community and separate property. Had Annie loaned the parties the money, the family court would have been obligated to characterize this as a community debt, which it did not. *See generally* NRS 123.220. Had Annie gifted Ruby the money alone, it would have been Ruby's sole and separate property, and the court found otherwise. *See* NRS 123.130. And had Annie gifted the community the money, it would have been a community asset presumably subject to an equal distribution. *See* NRS 123.220 and NRS 125.150(1)(b). Thus, understanding Annie's precise interest in the home would have been important to the family court's determination of how to properly characterize and then distribute the property in the divorce.[6]

---

[6]Annie heavily relies on the fact that, when Ruby appealed the divorce decree, the court of appeals used the following language in describing the factual history of the case: "in 2013, [the parties] *borrowed* money from Larry's mother, Annie, to buy a house and titled it in the Nevada corporation's name." According to Annie, this language confirms that the district court should have been required to confirm the court of appeals finding that Annie loaned, rather than gifted, the money to Ruby and Larry under offensive collateral estoppel. However, the prefatory language from this court was merely dicta, as that language never had any impact in

continued on next page...

Therefore, although the issue was actually and necessarily litigated and Ruby was a party in the prior litigation, the issues in district court and in family court were not identical. Nor was the family court's ruling final with respect to the ultimate issue Annie seeks to bar. As a matter of law then, issue preclusion does not apply here.

The district court did not abuse its discretion even if issue preclusion had been available

Even if issue preclusion had been available, the district court would not have abused its discretion in refusing to apply it. Issue preclusion comes in two species: defensive and offensive. 46 Am. Jur. 2d Judgments § 470. Defensive collateral estoppel occurs when a defendant seeks to prevent a plaintiff from asserting a claim the plaintiff previously litigated

---

resolving the issues then on appeal—namely, whether substantial evidence supported the district court's determination that RJN constituted community property. *See St. James Vill., Inc. v. Cunningham*, 125 Nev. 211, 216, 210 P.3d 190, 193 (2009) ("A statement in a case is dictum when it is "unnecessary to a determination of the questions involved." (quoting *Stanley v. Levy & Zentner Co.*, 60 Nev. 432, 448, 112 P.2d 1047, 1054 (1941))). And dicta likely cannot serve the basis for issue preclusion. *See* Restatement (Second) of Judgments § 27 cmt. h ("If issues are determined but the judgment is not dependent upon the determinations, relitigation of those issues in a subsequent action between the parties is not precluded. Such determinations have the characteristics of dicta, and may not ordinarily be the subject of an appeal by the party against whom they were made."); *Branch Banking & Tr. Co. v. Creditor Grp.*, No. 2:14-CV-00926-GMN, 2015 WL 1470692, at *4 (D. Nev. Mar. 30, 2015) (finding dicta cannot serve the basis under Nevada law for issue preclusion because dicta is inherently at odds with the fourth requirement of issue preclusion: that the issue be actually and necessarily determined), *aff'd and remanded sub nom. Matter of R&S St. Rose Lenders, LLC*, 748 F. App'x 753 (9th Cir. 2018); *Hetronic Int'l, Inc. v. Hetronic Ger. GmbH*, 10 F.4th 1016, 1052 (10th Cir. 2021) (holding that "dicta wouldn't suffice" for finding issue preclusion applied).

and lost, whereas offensive collateral estoppel occurs when a plaintiff tries to bar a defendant from relitigating an issue the defendant previously lost. *Id.*

If issue preclusion is available, trial courts have substantial discretion in choosing whether to allow parties to use it offensively. *See Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 882 (9th Cir. 2007) ("We have concluded that the preferable approach for dealing with these problems in the federal courts is not to preclude the use of offensive collateral estoppel, but to *grant trial courts broad discretion to determine when it should be applied.*"). We grant trial courts this substantial discretion because there are greater concerns of unfairness to a defendant. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329-31 (1979) ("Since a plaintiff will be able to rely on a previous judgment against a defendant but will not be bound by that judgment if the defendant wins, the plaintiff has every incentive to adopt a "wait and see" attitude, in the hope that the first action by another plaintiff will result in a favorable judgment."). Consequently, "[t]he general rule should be that in cases where a plaintiff could easily have joined in the earlier action . . . a trial judge should not allow the use of offensive [issue preclusion]." *Id.* at 331.

Here, Annie is attempting to use issue preclusion offensively. She is the plaintiff in this case who is seeking to bar Ruby from relitigating an issue that Annie believes Ruby lost in family court. And, Annie could have sought intervention in the family court case and did not. Indeed, Annie's counsel was present through both pre-trial and trial proceedings in family court. Annie herself testified in the family court trial. Moreover, the family court judge even asked Larry and Ruby whether Annie was a necessary party that needed to be joined. Larry's counsel responded that

he did not think so, but that he would defer to Annie's counsel, who was in the courtroom at the moment but did not respond. Finally, Annie's counsel specifically requested that the civil court decide Annie's interest in the home rather than the family court. Thus, Annie's counsel had every opportunity to seek to intervene and deliberately chose not to.

In failing to intervene, Annie apparently chose to "wait and see" if Larry could obtain a favorable judgment in family court (one to which she would not be bound) that she could then use to secure favorable terms in a proceeding to which she would be bound. And, indeed, that is arguably what happened in this case. Accordingly, the district court did not abuse its discretion in refusing to apply issue preclusion in this case even if it had been legally allowed. *Cf. Rose, LLC v. Treasure Island, LLC*, 135 Nev. 145, 156-57, 445 P.3d 860, 869 (Ct. App. 2019) (concluding that a party cannot assert on appeal that a necessary party was not joined when there was every opportunity for joinder below and a wait and see tactic was used instead).

Issue preclusion did not bar the district court from holding that Ruby did not fraudulently convey the home

Annie next argues that the district court improperly found that Ruby did not fraudulently convey the home to her sister's trust. According to Annie, the district court was precluded from so finding because the family court had already found that Ruby unlawfully transferred community property in violation of NRS 123.230.

First, Annie bore the burden of proving issue preclusion applied to this issue, *Bower*, 125 Nev. at 481, 215 P.3d at 718, and she has failed to cogently argue her point. We therefore need not consider this claim. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's

argument that is not cogently argued or lacks the support of relevant authority).

Second, as to the merits of her argument, the issues decided in family court and district court are not identical, nor was the issue actually litigated. Therefore, issue preclusion does not apply. *See Five Star*, 124 Nev. at 1055, 194 P.3d at 713. To find an unlawful transfer of property under NRS 123.230, the family court only needed to determine whether one spouse unilaterally devised, gifted, sold, or encumbered more than his or her share of the community property without the consent of the other. But to find a fraudulent conveyance/transfer claim under NRS 112.190, the asserting party had to show "(1) A transfer of an asset occurred, (2) [Annie's] claim preexisted the transfer, (3) the transfer was not for 'reasonably equivalent value,' and (4) the homeowner was insolvent at the time of the transfer." *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 623, 426 P.3d 593, 597 (2018). The issues are therefore not the same because the elements governing the claims are different, the arguments needed to prevail on both claims are different, and the evidence that needed to be presented for both is the kind that would not normally be discovered when litigating one of the causes of action alone. *See* Restatement (Second) of Judgments § 27 cmt. c (noting the factors to determine if issues are identical). Nor was the issue actually and necessarily litigated because the parties never presented evidence regarding anyone's insolvency.

Third, even if issue preclusion had been available, the district court would not have abused its discretion in refusing to apply it because, as noted above, Annie seeks to employ offensive issue preclusion. And, as we have explained above, the facts of this case indicate that it would be unfair to allow Annie to bar relitigation of this issue when she had the

opportunity to intervene and deliberately chose not to. *See Rose*, 135 Nev. at 156-57, 445 P.3d at 869.

Fourth, even if issue preclusion was available, and even if the district court should have applied it, Annie's claim fails. The whole point of the fraudulent conveyance statutes is to "prevent a debtor from defrauding creditors by placing the subject property beyond the creditors' reach." *Radecki*, 134 Nev. at 622, 426 P.3d at 597. As a threshold matter then, Annie's claim would fail because the district court decided that there was no loan and thus no debt. Thus, Annie's claim to repayment of the home purchase money did not preexist the home transfer, *id.* at 623, 426 P.3d at 597, because she had no claim at all. And Annie has not asked this court to determine whether sufficient evidence supported the district court's determination—just whether issue preclusion barred the court from finding as it did. Accordingly, because we do not reweigh the evidence on appeal, *Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998), we will not review that determination.[7] *See Greenlaw v. United States*, 554 U.S. 237, 243 (2008) ("[I]n both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decisions and assign to courts the role of neutral arbiter of matters the parties present.").

[7]Annie does claim that the district court abused its discretion in finding no fraudulent conveyance; however, her claim is wholly predicated upon the fact that the family court decided the unlawful transfer issue. Thus, she has not cogently argued that the district court otherwise lacked sufficient evidence to find as it did. We therefore decline to consider this argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38

The district court did not abuse its discretion in denying Annie's elder exploitation and unjust enrichment claims

Annie next claims that the district court abused its discretion in denying her elder exploitation and unjust enrichment claims.[8] On appeal, we will not disturb the district court's findings unless they are clearly erroneous and not supported by substantial evidence. *Dewey v. Redevelopment Agency of Reno*, 119 Nev. 87, 93, 64 P.3d 1070, 1075 (2003). "Substantial evidence is that which a reasonable mind *might* accept as adequate to support a conclusion." *Radaker v. Scott*, 109 Nev. 653, 657, 855 P.2d 1037, 1040 (1993) (internal quotations omitted) (emphasis added). Thus, this "deferential standard" can only be overcome "where it is clear that a wrong conclusion has been reached." *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 846 (2000). And even if the district court uses the wrong reasoning, this court will affirm the district court's decision

---

[8]Annie also summarily claims that the district court did not reference or adjudicate several of her claims and that this constitutes an abuse of discretion. Annie specifically asserts the district court did not address her claims for declaratory relief, quiet title, constructive and/or actual fraud, constructive trust, civil conspiracy, and punitive damages. However, she has not cogently argued her points or provided supporting authority for them, so we decline to review these arguments. *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Regardless, the district court's resolution that Annie did not loan Ruby and Larry money effectively denied her declaratory relief and quiet title claims because the district court found that she had no legal interest in the home. And because, as discussed below, we affirm the district court's finding of no unjust enrichment, her constructive trust claim would fail as well. *See Waldman v. Maini*, 124 Nev. 1121, 1132, 195 P.3d 850, 858 (2008). And, because the district court did not find that Annie had proven any independent cause of action, her punitive damage claim fails also. *See Wolf v. Bonanza Inv. Co.*, 77 Nev. 138, 143, 360 P.2d 360, 362 (1961).

if the court nonetheless reached the right result. *J.D. Constr. v. IBEX Int'l Grp.*, 126 Nev. 366, 381, 240 P.3d 1033, 1043 (2010).

The district court did not abuse its discretion in denying Annie's elder exploitation claim

Annie argues the district court abused its discretion in denying her elder exploitation claim because Ruby maintained throughout the family court proceeding and the district court proceeding that she was entitled to the home or her community property share of it. According to Annie, this showed Ruby's intent to permanently deprive Annie of her interest in the home, and the district court lacked sufficient evidence to deny Annie's claim.

To prevail on an elder exploitation claim, Annie needed to show that Ruby caused an older person to lose money or property through exploitation. NRS 41.1395(1). An "older" person is defined as someone 60 years of age or older. NRS 41.1395(4)(d). And to prove exploitation, Annie needed to show: (1) Ruby was someone who had Annie's trust or confidence, power of attorney, or guardianship over Annie; (2) Ruby acted; (3) Ruby obtained control through deception, intimidation, or undue influence over Annie and her money or assets, or Ruby converted Annie's money or assets; (4) with intent to permanently deprive Annie of her assets. NRS 41.1395(4)(b).

First, we need not review this claim because Annie failed to cogently argue how the district court lacked substantial evidence to support its decision. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Second, as to the merits of her argument, substantial evidence supports the district court's determination. Indisputably, Annie is an "older" person under the statute because she is in her mid-90s. However, the undisputed evidence also shows that the district court had substantial evidence to

conclude Ruby did not exploit Annie. Annie testified that she never had any conversations whatsoever regarding the home or finances with Ruby. Indeed, Annie firmly testified that Larry, her son—and Ruby's ex-husband—managed all her finances. Larry was and is trustee of Annie's trust, the sole beneficiary of it, and had and has power of attorney for Annie.

The evidence shows that Larry was the one who approached Annie about providing the funds to purchase a home. According to Larry, he approached Annie to purchase a home so that all three of them could live together as a family unit. Moreover, Larry asking Annie for money was commonplace. Consequently, Ruby never obtained control of Annie's money through intimidation or undue influence because the evidence shows Larry is the only one who ever interacted with Annie regarding the funds for the home.

Furthermore, both Larry and Annie maintained throughout the family court trial and the civil court trial that Annie loaned the parties the money. Ruby thus could not have converted *Annie's* assets because Annie herself acknowledges that the home itself would have been Ruby and Larry's community asset subject to marital division—a fact the divorce court confirmed. Yet it was Annie's burden to prove here in the civil court that she did, in fact, loan Ruby and Larry that money or otherwise had some protected interest in that money. According to the district court, she did not meet that burden. And Annie has not argued on appeal that sufficient evidence did not support that determination—instead, she only argues that res judicata barred the district court from so holding—so we will not review that issue anew. Thus, the district court did not clearly reach the wrong conclusion because Annie did not prove that *Ruby* converted her assets or that Annie maintained an ownership or security interest.

The district court did not abuse its discretion in denying Annie's unjust enrichment claim

In Annie's civil case, the district court found that Ruby was "not unjustly enriched from the purchase of the Property or any items purchased for the Property . . . [Larry] testified that he relied on his mother for his needs and this includes the money used to purchase the house. Plaintiff gifted Larry substantial funds during the time in question. . . . [O]ther purchases were shared between all residents of the Property." The district court then denied Annie's unjust enrichment claim. Annie now argues on appeal that

> there is no question Ruby was unjustly enriched because Ruby: (1) retained and used the funds provided by Annie; (2) has not repaid them in any way nor in any part; (3) maintained a lifestyle she never would have otherwise been able to afford; and (4) amassed and received her share of the considerable equity in the residence that was obtained only through the use and benefits of Annie's funds.

Therefore, according to Annie, even if Annie loaned or gifted the funds, Ruby still retained a benefit from living in the house and retaining the value of the money upon the home's sale.

"Unjust enrichment has three elements: 'the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is acceptance and retention by the defendant of such benefit under such circumstances that it would be inequitable for h[er] to retain the benefit without payment of the value thereof.'" *Nautilus Ins. Co. v. Access Med., LLC*, 137 Nev., Adv. Op. 10, 482 P.3d 683, 688 (2021) (quoting *Cert. Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012)). Thus, "the fact that a benefit is retained, enjoyed, and profitably exploited by the recipient, all without compensation, does not necessarily mean that

the recipient has been unjustly enriched." Restatement (Third) of Restitution and Unjust Enrichment § 2 cmt. b (Am. Law. Inst. 2011). Rather, "the benefit conferred must be something in which the *claimant has a legally protected interest*, and it must be acquired or retained in a manner that the law regards as unjustified." *Id.* (emphasis added). When the claimant voluntarily confers a benefit, "restitution is not usually available to [her when she] has neglected a suitable opportunity to make a contract beforehand." *Id.* at cmt. d.

Here, Annie never cogently argued or explained how the district court abused its discretion in finding that Ruby was not unjustly enriched, so we need not consider her argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Second, as to the merits of her argument, substantial evidence supported the district court's determination. Here, all parties agree that Annie voluntarily provided the funds used to purchase the residence and that Annie never discussed finances or this particular financial transaction with Ruby. And all parties agree that Annie voluntarily conferred a benefit that Ruby, Larry, and Annie jointly shared through a mutual living arrangement as a family unit. Thus, the unjust enrichment in this case occurred in the context of a domestic relationship wherein all parties received some recognizable benefit from Annie providing the purchase funds for the residence.

And although arguably Ruby "profitably exploited" that benefit, Annie neglected to make a contract beforehand to preserve her interest even though she had a suitable opportunity to do so. Indeed, although Larry alone testified at trial that a contract existed, he acknowledged that no signed document existed documenting the terms of that contract. Annie's own brief, vague trial testimony acknowledged that she had nothing to do

with the finances—only Larry did. Additionally, Larry was the trustee of Annie's estate and given power of attorney over Annie. Consequently, Annie had every opportunity beforehand to ensure such a contract had been signed if one had been intended. And purchasing a one million dollar residence is exactly the type of circumstance where a contract would be warranted or possibly a post-marital agreement. *See* NRS 123.070. Accordingly, Annie had a suitable opportunity to make a contract, and Annie failed to prove at district court that she had attempted such a contract, let alone execute one.

Furthermore, Larry was not only the trustee of Annie's estate, but the sole beneficiary of it as well. At trial, Larry himself testified that Annie was his only source of income and that he had been using Annie's trust funds to pay for Ruby and Larry's rental home before purchasing the new home. Moreover, Annie testified that she could not remember any of the specifics regarding the home purchase.

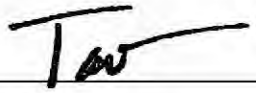
Likewise, Annie never proved to the district court that she had a legally protected interest in the residence or the money used to purchase the residence—an essential element for proving unjust enrichment. Indeed, the family court determined that the residence was a community asset subject to any potential interest Annie might have. Yet the district court expressly found that Annie did not loan Ruby and Annie the money. She thus failed to prove that she had a legally protected interest in the residence or the money used to purchase the residence. And, as explained above, Annie never properly challenges on appeal the district court's evidentiary determination that she did not loan Ruby and Larry the money.

In summary, Ruby did in fact receive some benefit in this case. But she did not request that benefit nor did she discuss that benefit with

Annie. Indeed, Larry, Ruby's then-husband, is the one who solicited the benefit and then, as Annie's power of attorney and trustee of her trust, delivered that benefit. To do so Larry used Annie's trust funds—of which he is also the sole beneficiary. And it is that same trust that paid for the parties' rental home before purchasing the home in question, and it is that same trust that provided Larry his sole source of income. And that benefit came without Larry providing the district court any signed, written documentation showing that any contract had been formed at all or even a post-marital agreement. Under these circumstances, the district court did not clearly reach the wrong conclusion. Substantial evidence in the record thus supports the district court's determination that Ruby was not unjustly enriched from taking her share of a community asset that Annie failed to establish Annie had a legal interest in.[9] Accordingly, we

AFFIRM the judgment of the district court.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

[9]Insofar as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 23
Hofland & Tomsheck
Cary Colt Payne
Law Offices of Shawanna L. Johnson
Eighth District Court Clerk